

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-26-T – ORDER NO. 2004-278

JUNE 8, 2004

IN RE:	Application of Coastal Moving & Storage)	ORDER GRANTING
	Grand Strand, Inc., 10838 Kings Road,)	CLASS E CERTIFICATE
	Myrtle Beach, SC 29572 (District 1) for a)	
	Class E Certificate of Public Convenience and)	
	Necessity)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the matter of the Application of Coastal Carrier Moving & Storage Grand Strand, Inc. (“Coastal” or the “Company”) for a Class E Certificate of Public Convenience and Necessity to transport household goods between points and places in Horry, Georgetown and Marion Counties, South Carolina.

A Notice of Filing regarding the Application for Certificate was published one time in newspapers of general circulation in accordance with instructions from the Executive Director of the Commission. The Company filed proofs of publication indicating that the Notice of Filing was published as required. A Petition to Intervene was filed by Coastal Transfer and Storage, Inc. of Georgetown, South Carolina by and through its attorney, Jack M. Scoville, Jr.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved

public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2001) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

9. 26 S.C. Code Regs. 103-133 (Supp. 2001) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a

² By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2001) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

EVIDENCE OF RECORD

A hearing on the Certificate was held on May 26, 2004, at 2:30 p.m., with the Honorable Mignon L. Clyburn, Chairman, presiding. The Company was represented by David Popowski, Esquire. The Commission Staff was represented by F. David Butler, Esquire.

As a preliminary matter prior to the testimony, Mr. Popowski presented to the Commission a letter signed by him and Mr. Scoville agreeing to the withdrawal of the intervention of Coastal Transfer and Storage, Inc. in return for the Company deleting

Georgetown County from its Application, and other terms and conditions that are set forth in that letter.

Sidney B. Baird, III, the co-owner of the Company, testified. Mr. Baird stated that he holds forty-nine percent of the stock of the Company, and G. Wayne Ray, Jr. holds fifty-one percent. Mr. Ray was present at the hearing. Mr. Ray is the principal of Coastal Carrier Moving & Storage, Inc. of Wilmington, North Carolina (“Coastal Carrier”). Mr. Baird is 34 years old and has been employed by Coastal Carrier for four years where he is now Director of Operations. He has worked in all facets of the business including packing, loading, driving, sales and administrative duties. He will be the Chief Operating Officer for the Company. An inspection was conducted of the Company by the South Carolina Department of Public Safety, and the Company received a passing rating. Coastal has no judgments against it. Mr. Baird testified that he is familiar with all of the statutes and regulations including safety operations of South Carolina, and the Company agrees to operate in compliance with them. The Company will lease a 2003 International twenty-four foot straight truck from Coastal Carrier for one year, subject to renewals, and will purchase from Coastal Carrier a 1979 International truck. The Company has also leased space at 10838 Kings Road in Myrtle Beach, South Carolina for both storage and office use. Evidence of both public liability and cargo insurance are presently on file with the Commission. Mr. Baird stated that Coastal Carrier has employed a full time Safety Director that will be available to the Company when necessary. The Company has received a Certificate of Compliance from the South Carolina Department of Motor Vehicles to transport freight other than household goods

and hazardous waste for disposal between points in South Carolina. We have examined the Company's equipment and financial status and are satisfied that these are favorable.

Mr. Baird testified that there is a need for the services of the Company. He stated that in investigating a number of household good movers in Horry and Marion Counties, particularly in Horry County, he determined that there are one-half as many movers there as there are presently in New Hanover County, North Carolina where Wilmington and Coastal Carrier are located. He stated that the Myrtle Beach area has shifted from relying only on tourism to becoming a region of full-time residence. New construction, including road building, is prevalent. Mr. Baird presented copies of the yellow page listing and advertisement for the Company that are already in the current telephone book for Horry County. It was necessary for the Company to place the listing and advertisement prior to this hearing because of the telephone company's deadline. Mr. Baird states that the Company is already receiving five telephone calls per day requesting estimates for its services.

FINDINGS OF FACT

1. Upon consideration of the matter, we find the Applicant Coastal Carrier Moving & Storage Grand Strand, Inc. has demonstrated that it is fit, willing, and able to perform the services sought by its Application as modified.

2. We further find that the testimony of the Applicant's witness Baird indicates that the proposed service is required by the present public convenience and necessity.

3. Based upon the record before the Commission and the statutory requirements along with the guidelines contained in the Commission's regulations, we find sufficient evidence to grant the Application of Coastal Carrier Moving & Storage Grand Strand, Inc. to provide for the moving of household goods as defined in Regulation 103-210(1) between points and places in Horry and Marion Counties.

CONCLUSIONS OF LAW

1. South Carolina Code Ann. Section 58-23-590(C)(Supp. 2003) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations, and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

2. The Commission has typically waived the "shipper witness" rule required under 26 S.C. Code Regs.103-133 (Supp. 2003) for applicants seeking authority in a three contiguous county area. In the present case, as the Company is only seeking authority in a two contiguous county area, we waive the requirement for the presentation of shipper witnesses.

3. The testimony of Company witness Baird reveals that Coastal is fit, willing, and able under the standards contained in 26 S.C. Regs.103-133 (Supp. 2003).

4. The Commission's granting of authority to the Applicant in this case is contingent upon the Company's compliance with all applicable Commission statutes and regulations as specified below.

IT IS THEREFORE ORDERED THAT:

1. The Application of Coastal Carrier Moving & Storage Grand Strand, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods as follows:

Household Goods, as defined in Reg. 103-210(1):
Between points and places in Horry and Marion Counties, South Carolina.

2. Coastal Carrier Moving & Storage Grand Strand, Inc. shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976 and Supp. 2003), as amended, and by R.103-100 through R. 103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended (Supp. 2003), and R.38-400 through R. 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended (Supp. 2003), within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon the Company's compliance with S.C. Code Ann. Section 58-23-10, et. seq., and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26, a Certificate shall be issued to Coastal Carrier Moving & Storage, Inc. authorizing the motor carrier services granted herein.

4. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance, and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission

additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

5. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

6. The Order shall remain in full force and effect until the further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:

/s/
Mignon L. Clyburn, Chairman

/s/
Bruce F. Duke, Executive Director

(SEAL)